

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Streamlining Deployment of Small Cell)	WT Docket No. 16-421
Infrastructure by Improving Wireless Facilities)	
Siting Policies)	
)	
Mobilitie, LLC Petition for Declaratory Ruling)	

**COMMENTS OF TOWN OF COLONIE, NEW YORK
IN RESPONSE TO THE PUBLIC NOTICE (DEC. 22, 2016) IN WT DOCKET NO. 16-421**

Introduction

The Town of Colonie (“Colonie”) opposes a one-size-fits all preemption of local siting authority, because there are many differences between communities, including variations in applicable state statutes, population and budget size, cost of living, aesthetic character, and the type and amount of existing infrastructure. Colonie asks the Commission to avoid placing any further restrictions on local governments as they work with wireless carriers and infrastructure providers to integrate this new technology into their planning and zoning processes in a way that preserves and protects the finite rights-of-way belonging to their residents.

Colonie is suburban community of more than 80,000 residents, located adjacent to the New York State Capital. Colonie is about 57 square miles in size and includes the Albany International Airport and two major interstate highways. The primary wireless telecommunications carriers operating in Colonie are AT&T, Verizon, Sprint, and T-Mobile. According to the coverage maps of these carriers, which are available online, each has full coverage throughout Colonie. (However, T-Mobile’s coverage map, which is the most detailed, shows only “fair” coverage in some parts of Colonie). Colonie has received two or three applications for small cells, which were reviewed and approved under Colonie’s existing wireless telecommunications facilities siting local law. Colonie has not received any complete applications for micro cells or DAS.

Limitations on Fees

Like many local governments, Colonie does not have adequate resources to independently review applications for wireless communications facilities to ensure people’s safety and address residents’ concerns about visual impacts. As a result, Colonie relies on outside consultants and engineers – the cost of which is paid by the applicant, as required by local law.

If the Commission issues a declaratory ruling limiting application fees to a set dollar figure or to the amount paid by other applicants, local governments face a tough decision: rubber stamp the application, resulting in a potentially unsafe installation, or deny the application and wait for litigation and a court order requiring its approval. That applicants are often sophisticated multinational corporations only adds to the pressure on local governments. The cost of outside assistance will vary based on the characteristics of each application, including design, complexity, compliance with safety standards, conflict with existing utilities, etc. Rather than requiring taxpayers to pay for all or part of the review, it is fair to have the businesses that are getting the benefit of the approval pay for the cost of the review.

Finally, it is unclear why a local government should not be allowed to charge more for private, profit-making use of the ROW than for incumbent utilities, when municipal approval for existing utilities may have been granted over a century ago – long before Congress adopted the requirement that fees be competitively neutral and long before wireless technology even existed. Limiting the cost of installing a wireless facility in the ROW will encourage providers to build new towers in the ROW, rather than co-locate on existing facilities for which providers will have to pay fair market rents.

Preemption of Local Authority

Colonie asks that the Commission not further limit a local government's ability to reasonably regulate the location of installations. For example, poles and other structures cannot be allowed to block sight of traffic devices or the road itself. Additionally, local governments must be able to direct that structures be moved to accommodate the widening of a road or installation of traffic safety devices. In general, it is important to keep the ROW clear, as liability for damage or injury due to additional structures in the ROW is a significant concern. Indeed, Colonie's Department of Public Works frequently asks residents and businesses to remove obstructions, such as fences and poles, from the ROW.

Additionally, no resident wants a pole directly in front of their house, blocking their view, and causing their well-tended lawn to be dug up and left a dirty mess. In a neighborhood where utilities are underground, which includes most developments constructed in Colonie since the 1980's, a new above-ground structure in the ROW would be particularly disruptive. Local governments should be allowed to prohibit placement of poles or similar structures in neighborhoods where the existing utilities are located underground, limit the height of new poles to the height of existing poles, and require reasonable camouflage of structures and/or antennas.

Local governments will have to consider not only the aesthetic impact of the initial installation, but the impact of potential future installations, which are allowed with significantly limited review under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012. Colonie asks that the Commission adopt an order precluding the application of Section 6409(a) to small cells and microcells and to any facilities located in the ROW.

Mobilitie “Applications”

In September, 2016, Mobilitie submitted an incomplete “application” for six new 75 to 80 foot poles in the ROW – these are not small-scale additions to existing poles or other infrastructure as Mobilitie’s petition suggests. Rather, Mobilitie advised us that these were the first of perhaps hundreds of poles that it will seek to install in the ROW in Colonie.

While Mobilitie claims that it is merely trying to expand coverage for residents, it actually provides empty infrastructure that does not, by itself, lead to expanded coverage. A serious concern is that Mobilitie could submit applications in order to construct towers or poles in the ROW to be first in line for potential tenants – without actually having a carrier committed to using the tower. Based on its petition to the Commission, Mobilitie provides backhaul and structures on which small cells and DAS may be attached by a third party. A local government should be able to make sure that the applicant will actually be supporting a wireless telecommunications system, rather than building poles on speculation.

Conclusion

While weighing the requests made by Mobilitie and the industry, please keep in mind that the ROW is a public asset that serves not only as a corridor for safe transportation and walking, but as the front yard of most residents and businesses.

Thank you for your consideration.

Respectfully submitted,

Dated: March 8, 2017

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